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**CHANGES MADE BY COURT**

UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
(Riverside Division)

In re:  
DOUGLAS J. ROGER, M.D., INC., APC,  
Debtor.

**Bankruptcy Case No. 6:13-bk-27344-MH**

**Chapter 7**

**Assigned to:**  
**Hon. Mark D. Houle**  
**Ctrm. 303**

**ORDER GRANTING SECOND JOINT  
MOTION BY CHAPTER 7 TRUSTEE AND  
REVERE FINANCIAL CORPORATION  
FOR ORDER APPROVING  
SETTLEMENT BETWEEN CHAPTER 7  
TRUSTEE AND REVERE FINANCIAL  
CORPORATION**

**Date: 2019-07-10**  
**Time: 11:00 a.m. PDT**  
**Place: Ctrm. 303**

**I. INTRODUCTION**

On 10 July 2019, at 11:00 a.m., the United States Bankruptcy Court for the Central District of California, Riverside Division, 3420 Twelfth Street, Riverside, California 92501, Courtroom 303, the Honorable Mark Houle, presiding (the “Court”), heard the Second Joint Motion by Chapter 7 Trustee and Revere Financial Corporation for Approval of Settlement between Chapter 7 Trustee and Revere Financial Corporation, filed 24 January 2018 [Docket # 521] (the “Motion”).

**II. APPEARANCES**

Chad Haes of Marshack Hays, LLP, appeared on behalf of Arturo Cisneros, the Chapter 7 Trustee.

No other parties appeared.

**III. ORDER**

The Court, having read and considered the Motion and all papers filed in support of, and opposition to, and the District Court’s order relating to, the Motion, and having heard all oral arguments for and against the Motion, finds that good cause exists to grant the Motion as follows:

1. The Motion is granted in its entirety for the reasons set forth in the record and the Court’s tentative ruling (attached).

2. The Settlement Contract between Arturo Cisneros, as the Chapter 7 Trustee of the Bankruptcy Estate of Debtor Douglas J. Roger, M.D., Inc., APC, and Revere Financial Corporation, dated 24 January 2018 (the “Settlement Contract”), which was attached as Appendix “A” to the Second Joint Motion and Moving Memorandum by Chapter 7 Trustee and Revere Financial Corporation for Order Approving Settlement between Chapter 7 Trustee and Revere Financial Corporation, filed 24 January 2018 [Docket # 521], including, but not limited to, the Liquidating Trust Agreement for the Bankruptcy Estate of Debtor Douglas J. Roger, M. D., Inc., APC, [Appendix “A,” Exhibit 4.32], is approved.

3. The DJRI Trustee is authorized to enter into the Settlement Contract and take all steps necessary to implement and perform the terms of the Settlement Contract.

4. All terms in the Settlement Contract shall bind the DJRI Trustee/the  
bankruptcy estate, RFC, and all other interested parties as of the Approval Date.<sup>1</sup>

5. Effective as of the Approval Date, the Court also orders all that is set forth  
in paragraphs eight through forty-five of this order:

**A. RFC's Security Interest and Adequate Protection Liens**

**Secured Debt and Security Interest**

6. RFC has a secured claim against the bankruptcy estate pursuant to the BLP  
Loan and the Roger Loan.

7. The RFC Security Interest, on and after the DJRI Petition Date, constitutes  
a lien against all Assets except Claims and Proceeds of Claims that the DJRI Trustee owns  
under sections 544 through 553, inclusive, of the Bankruptcy Code, including, but not  
limited to the following claims which are not subject to the RFC Security Interest:

- a. DJRI Estate/DJRI-DBP Claim;
- b. DJRI Estate/OIC Claim;
- c. DJRI Estate/Trustee-Professionals Claims;
- d. Receiver Claims; and
- e. RFC Claims.

8. The RFC Security Interest, on and after the DJRI Petition Date, is legal, is  
valid, has attached, is perfected, has first priority over all other liens against, or security  
interests in, all Assets except Claims and Proceeds of Claims that the DJRI Trustee owns  
solely under sections 544 through 553, inclusive, of the Bankruptcy Code including, but  
not limited to:

- a. DJRI Estate/DJRI-DBP Claim;
- b. DJRI Estate/OIC Claim;
- c. DJRI Estate/Trustee-Professionals Claims;

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<sup>1</sup>From this point forward, all words with initial capitalization in this order shall have the  
same meaning and definition as in the Settlement Contract.

- d. Receiver Claims; and
- e. RFC Claims

subject only to the limitation in paragraph 45(b).

- 9. The RFC Security Interest is enforceable and binds the DJRI Estate.

#### **Adequate Protection**

10. To protect RFC regarding the DJRI Trustee's use of those Assets subject to the RFC Security Interest, the DJRI Trustee grants the Adequate Protection Liens to RFC, which constitute liens against all Assets and any RFC Advances. Such Adequate Protection Liens are legal, are valid, have attached, are perfected, have first priority over all other liens against, and security interests in, all Assets and the RFC Advances, and are enforceable additional and replacement liens that bind the DJRI Trustee and the DJRI Estate with the same effect as the RFC Security Interest subject only to the limitation in paragraph 45(b).

#### **Attachment**

11. The RFC Security Interest and the Adequate Protection Liens have attached under all applicable federal, state, or other laws on the Approval Date.

12. The RFC Security Interest and the Adequate Protection Liens do not require any further act, consent, filing, notice, order, possession, or waiver by any Person to effect attachment.

#### **Perfection**

13. The RFC Security Interest and the Adequate Protection Liens:

- a. are deemed to be perfected and recorded under all applicable federal, state, or other laws as of the Approval Date; and
- b. do not require any further act, consent, filing, notice, order, possession, or waiver by any Person to effect perfection.

#### **Priority**

14. To the extent RFC seeks to file or record any document, including, but not limited to, any consents, financing statements, mortgages, notices of liens and security

1 interests, trust deeds, or waivers to give full effect to the RFC Security Interest or the  
2 Adequate Protection Liens, any such filing, recording, or waiver shall relate in priority  
3 back to the date of the filing of the Roger/DJRI Financing Statements.

4 **Waiver**

5 15. The DJRI Trustee, on his own behalf, on behalf of any Persons whom he  
6 employs, and on behalf of the DJRI Estate, irrevocably waives all powers and rights to,  
7 and shall not:

8 a. grant or impose under section 364 of the Bankruptcy Code or  
9 otherwise any liens against, or security interests in, any of the Assets that are *pari*  
10 *passu* with, or senior to, the RFC Security Interest or the Adequate Protection  
11 Liens; or

12 b. seek a surcharge against any of the Assets under section 506(c) of  
13 the Bankruptcy Code or otherwise, or to modify or affect any right of RFC.

14 **Continuing Effect**

15 16. The RFC Security Interest and Adequate Protection Liens shall continue in  
16 all Assets and all Proceeds and any RFC Advances until the DJRI Trustee actually pays  
17 the money that comprises the Assets, Proceeds, and RFC Advances to the permitted  
18 recipients pursuant to section 6.7 of the Settlement Contract.

19 **B. Carve-Out**

20 **Grant**

21 17. RFC grants the Carve-Out to the DJRI Trustee.

22 **Guarantee**

23 18. RFC guarantees that the DJRI Trustee will be able to use the Carve-Out  
24 and the DJRI Estate Priority Distribution (as defined in the Liquidating Trust Agreement)  
25 pursuant to 6.7.1 of the Settlement Contract despite any other Persons' claims of security  
26 interests in that money, by either or both:

27 a. first, defending and defeating all such claims in the name of the  
28 DJRI Trustee; and/or

b. second, making RFC Advances.

**C. Asset Liquidation**

**Liquidating Trust Assets**

19. On the Approval Date, the DJRI Trustee shall transfer for prosecution and/or settlement and shall be deemed, without further action, to have transferred for prosecution and/or settlement the Liquidating Trust Assets, regardless of when created, to the Liquidating Trust to be held, administered, and liquidated by the Liquidating Trustee for the benefit of the creditors of the DJRI Estate pursuant to the Liquidating Trust Agreement.

**Distributions From Liquidating Trust**

20. Any distributions received by the DJRI Estate from the Liquidating Trust shall be free and clear of any liens, claims, or interests of RFC and of any other alleged secured claims as required by section 6.5 of the Settlement Contract; provided, however, that the RFC Security Interest and/or the Adequate Protection Liens shall continue in such distributions until the DJRI Trustee actually pays the money that comprises the Assets, Proceeds, and RFC Advances to the permitted recipients pursuant to section 6.7 of the Settlement Contract.

**D. Asset Distributions**

**Allowed Administrative Claims and Allowed Non-Administrative Claims**

21. The DJRI Trustee shall use:

- a. all Proceeds of the tax attributes of DJRI;
- b. all DJRI Estate/DJRI-DBP Claim Sale Proceeds;
- c. all DJRI Estate/OIC Claim Sale Proceeds;
- d. all of the Carve-Out;
- e. all distributions from the Liquidating Trust to the DJRI Trustee; and

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f. all Proceeds from the DJRI Trustee's liquidation of any Liquidating Trust Asset that the Liquidating Trustee transfers back to the DJRI Estate pursuant to the Liquidating Trust Agreement and that the DJRI Trustee chooses not to abandon, to pay Allowed Administrative Claims and Allowed Non-Administrative Claims in accord with section 726 of the Bankruptcy Code.

**Allowed Secured Claims**

22. Except as provided in section 6.7.1 of the Settlement Contract, the DJRI Trustee shall distribute all money that the DJRI Trustee receives from all Proceeds of all Assets, including, but not limited to, the DJRI Estate Cash Collateral, to:

a. RFC without any reduction of any sort not later than 14 days after the DJRI Trustee or any Person acting at the DJRI Trustee's direction has possession, custody, or control of the Proceeds and/or 14 days after the Approval Date, whichever is later;

b. unless another Person claims a security interest in the Proceeds, in which case the DJRI Trustee shall distribute Proceeds pursuant to a Final Order of the Bankruptcy Court.

**E. Asset Abandonment**

**Unliquidated Assets**

23. The DJRI Trustee shall be deemed to have automatically abandoned all unliquidated Assets, including the Receiver Claims and the RFC Claims, and specifically excluding only the tax attributes of DJRI, the DJRI Estate/DJRI-DBP Claim Sale Proceeds, the DJRI Estate/OIC Claim Sale Proceeds, the DJRI Estate/Trustee-Professionals Claims, and the Liquidating Trust Assets, effective immediately on the Approval Date, to the extent that the DJRI Trustee has not previously done so, without further action by any Person or entry of any order by the Bankruptcy Court other than the Settlement Order.

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2 **Liquidating Trust Assets**

3 24. The DJRI Trustee shall abandon any Liquidating Trust Asset that the  
4 Liquidating Trustee, in the Liquidating Trustee's sole and absolute discretion, transfers  
5 back to the DJRI Trustee pursuant to the Liquidating Trust Agreement and that RFC, in  
6 RFC's sole and absolute discretion, designates in writing for the DJRI Trustee to abandon  
7 unless the DJRI Trustee chooses to actively prosecute that Liquidating Trust Asset for the  
8 DJRI Estate.

9 **Orders**

10 25. RFC is authorized to submit any orders to the Bankruptcy Court to enter:  
11 a. as additional evidence of the DJRI Trustee's deemed abandonment  
12 of any unliquidated Asset pursuant to section 6.8.1 of the Settlement Contract; and  
13 b. to effect the DJRI Trustee's abandonment of any Claim upon  
14 RFC's election pursuant to section 6.8.2 of the Settlement Contract,  
15 both in RFC's sole and absolute discretion.

16 26. The DJRI Trustee shall not object to, or otherwise interfere with, RFC's  
17 efforts to obtain, such orders as long as such orders are consistent with this Settlement  
18 Contract and applicable bankruptcy law.

19 **F. RFC-DJRI Estate Claim**

20 **Allowance**

21 27. For purposes of the DJRI Bankruptcy Estate, the RFC-DJRI Estate Claim  
22 is allowed in the total combined secured and unsecured amount of \$5,500,000.00, which  
23 shall be allowed only as follows:

24 a. a secured claim in accord with section 506 of the Bankruptcy Code  
25 that is entitled to adequate protection as the Settlement Contract provides in the  
26 amount of \$4,000,000.00; and

27 b. a general unsecured claim under section 502 of the Bankruptcy  
28 Code in the amount of \$1,500,000.00.



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2 **Credit**

3 28. RFC shall credit against the \$4,000,000.00 total secured portion of the  
4 RFC-DJRI Estate Claim:

- 5 a. \$286,354.00, which the Receiver collected on behalf of DJRI; and  
6 b. any payments on the Roger Loan and/or the BLP Loan that RFC  
7 receives from any source, including, but not limited to, BLP, the BLP Estate,  
8 DJRI, the DJRI Estate, and/or the Liquidating Trust.

9 **Objection**

10 29. The DJRI Trustee shall not take any action against any Claim by RFC  
11 against the DJRI Estate, whether by objection or otherwise.

12 **Receiver**

13 30. The Receiver has assigned all Claims that the Receiver may have against  
14 the DJRI Estate to RFC.

15 31. The RFC-DJRI Estate Claim includes all Claims that the Receiver may  
16 have against the DJRI Estate.

17 32. RFC shall indemnify the DJRI Estate and the DJRI Releasees for any  
18 Claim that the Receiver asserts against the DJRI Estate and the DJRI Releasees.

19 33. RFC and/or the Receiver are authorized to file an amended proof of claim  
20 against the DJRI Estate to state the full amount of the Receiver's Claim against the DJRI  
21 Estate, but which shall remain subject to the allowed amounts in section 6.9.1 of the  
22 Settlement Contract.

23 34. The DJRI Trustee shall not take any action against any Claim by the  
24 Receiver against the DJRI Estate, whether by objection or otherwise.

25 **RFC—BLP, Ebarb, and Roger**

26 35. The DJRI Trustee will take no position at any time on the validity or  
27 amount of RFC's Claims against BLP, Ebarb, or Roger in action, case, or proceeding.

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2 **RFC's Claim Objections**

3 36. RFC is authorized to object to any Claim and any administrative expense  
4 that any Person seeks to recover from the DJRI Estate, and the DJRI Trustee will not  
5 interfere with any such objection; provided, however, the DJRI Trustee and any  
6 professionals that the DJRI Trustee hires may defend any objection that RFC makes to  
7 any request that the DJRI Trustee or any professional that the DJRI Trustee hires,  
8 respectively, makes for fees and expenses.

9 **G. Relief from Stay**

10 **All Purposes**

11 37. The Receiver and RFC are granted immediate relief from the automatic  
12 stay in the DJRI Estate on the Approval Date, to whatever extent the automatic stay then  
13 still applies, for all purposes, including, but not limited to, as to DJRI, to:

14 a. liquidate and obtain judgments and/or orders on all Claims that the  
15 Receiver and RFC may have against any of BLP, Ebarb, DJRI, and Roger before  
16 the State Court, but not to enforce any judgment or order liquidating those Claims  
17 against any Asset except any abandoned Asset; and/or

18 b. obtain judgments and/or orders to discharge the Receiver in all  
19 respects, including, but not limited to, obtaining approval of the Receiver's  
20 accounting, including, but not limited to, determining/approving the amounts of  
21 the Receiver's fees/expenses, awarding the Receiver's fees/expenses against any  
22 of BLP, Ebarb, DJRI, and Roger, and terminating the office of the Receiver in the  
23 RFC Action, before the State Court, but not to enforce any judgment or order on  
24 such matters against any Asset except any abandoned Asset.

25 **Limit**

26 38. RFC shall not take any action against the Liquidating Trust or the DJRI  
27 Estate that is inconsistent with the express terms of the Settlement Contract or the  
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Liquidating Trust so long as the DJRI Trustee is not in material breach of the Settlement Contract or the Liquidating Trust Agreement.

**H. Other Provisions**

**Determination**

39. The DJRI Trustee shall employ section 505 of the Bankruptcy Code to obtain a prompt determination of taxes for the DJRI Estate.

**Tax Attributes**

40. The DJRI Trustee shall act in good faith to preserve all tax attributes favorable to the DJRI Estate and pursue refunds for the benefit of the DJRI Estate.

**Payment**

41. The DJRI Estate and RFC shall each pay their own taxes arising out of, or related to, any transaction that is the subject of this Settlement Contract.

**Liquidating Trust**

42. The Bankruptcy Court finds that the Liquidating Trust qualifies as a liquidating trust within the meaning of section 301.7701-4(d) of the United States Treasury Regulations for federal and applicable state income tax purposes.

43. The Parties shall file tax returns reporting items of taxable income and loss in respect of the Liquidating Trust as required by and in a manner that is consistent with the provisions of the Liquidating Trust Agreement.

**Cooperation**

44. The DJRI Trustee and RFC, as creditor and as Liquidating Trustee, shall reasonably cooperate with each other, the Liquidating Trust, and other Persons as the DJRI Trustee and RFC, as creditor and as Liquidating Trustee, may request, including, but not limited to, by providing assistance, documents, and information, signing and delivering any and all documents, and performing any and all acts, to liquidate all Assets, prosecute/defend all Claims, collect all Proceeds, and satisfy all allowed Claims; the Person requesting such cooperation shall pay any reasonable expenses of the Person providing the cooperation incurs to do so. Nothing contained in this Settlement Contract

1 or the Liquidating Trust Agreement, however, shall prevent the DJRI Trustee from filing  
2 and seeking approval of a trustee final report reserving the right to re-open the case to  
3 administer any additional Assets the DJRI Estate receives pursuant to this Settlement  
4 Contract or the Liquidating Trust Agreement.

5 **Preclusion**

6 45. Nothing in the Settlement Contract shall bind, or constitute evidence for or  
7 against:

8 a. BLP, DJRI, Ebarb, the Receiver, RFC, or Roger in the Ebarb  
9 Adversary Proceeding, the RFC Action, or the RFC Adversary Proceeding; and

10 b. Any Person who claims a security interest in any Asset in any  
11 action, case, or proceeding to determine any issue regarding that claimed security  
12 interest, including, but not limited to the existence, validity, effectiveness, nature,  
13 extent, scope, or priority of that claimed security interest.

14 pursuant to any legal or equitable doctrine, including, but not limited to, claim preclusion,  
15 collateral estoppel, estoppel, issue preclusion, judicial estoppel, merger, *res judicata*, or  
16 waiver, whether offensively or defensively.

17 IT IS SO ORDERED.

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26 Date: August 9, 2019



27 Mark Houle  
28 United States Bankruptcy Judge

**United States Bankruptcy Court  
Central District of California  
Riverside  
Judge Mark Houle, Presiding  
Courtroom 303 Calendar**

**Wednesday, July 10, 2019**

**Hearing Room 303**

11:00 AM

**6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat**

**Chapter 7**

**#2.00** Motion to Approve Compromise Under Rule 9019 by Chapter 7 Trustee and Secured Creditor Revere Financial Corporation; Moving Memorandum

EH\_\_

Docket 521

**Tentative Ruling:**

**7/10/19**

**PROCEDURAL BACKGROUND**

On October 20, 2013, Douglas Jay Roger, MD, Inc., ("Debtor") filed a Chapter 7 voluntary petition. In 2015, Trustee filed six adversary proceedings. Of the six, two are closed, one has been resolved but is still open, and three are still pending.

On April 6, 2016, Trustee filed motions to approve compromise ("Compromise Motions") in two of the adversary proceedings (the "Auctioned Adversaries"). After several continuances of the Compromise Motions, the defendants in the Auctioned Adversaries filed motions to enforce the settlement agreements on November 5, 2016 (the "Enforcement Motions"). On January 31, 2017, the day before the hearing on the Compromise Motions and Enforcement Motions, Trustee filed additional compromise motions (the "Second Compromise Motions") with Revere Financial Corporations ("Revere") which included the subject matter of the Compromise Motions as well as a variety of additional matters. Ultimately, after further continuances, the Court held auctions on the Auctioned Adversaries on August 2, 2017. At the auctions, Revere was the highest bidder for one of the Auctioned Adversaries and the adversary defendant was the highest bidder for the other Auctioned Adversary.

**United States Bankruptcy Court  
Central District of California  
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Judge Mark Houle, Presiding  
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11:00 AM

**CONT... Douglas J Roger, MD, Inc., A Professional Corporat**

**Chapter 7**

On January 24, 2018, Revere filed a new compromise motion (the "Third Compromise Motion"). On January 31, 2018, Bank of Southern California, N.A. filed a limited opposition to the Current Compromise Motion. On February 1, 2018, Debtor filed its opposition to the Current Compromise Motion. On February 6, 2018, American Express Company filed a joinder to Debtor's opposition. On February 13, 2018, the Court continued the hearing for six weeks to March 28, 2018.

At the hearing on March 28, 2019, the Court expressed its intention to hold an auction of the claims which were included in the Third Compromise Motion, and continued the matter for an additional six weeks. On April 18, 2019, Trustee filed a sale motion. This sale motion was objected to by Bank of Southern California, N.A., American Express Company, Douglas J Roger, MD ("Roger"), and Revere. On April 26, 2018, Roger requested an emergency hearing, arguing, essentially, that the procedures selected by Trustee were not in compliance with the Court's oral instructions at the hearing of March 28. Subsequently, the Court converted the hearing of May 9 into a status conference to resolve the new dispute. The hearing of May 9 was subsequently continued to June 11, and an amended sale motion was filed by Trustee on May 21. Objections were ultimately filed by Roger, Revere, and American Express Company.

On June 11, 2019, the Court held an auction, however, there were no successful overbids (i.e. overbids which cleared a certain minimum amount). After the unsuccessful auction, the Court took the Third Compromise Motion under submission. On July 26, 2018, Revere appealed the sale motion (the "Appeal"). After the Appeal, the Court withdrew the Third Compromise Motion from submission and, on August 22, 2018, informed the parties that the Appeal would have to be resolved before the Court ruled on the Third Compromise Motion.

On April 5, 2019, the district court reversed the Court's order approving the holding of an auction,<sup>1</sup> invalidating a sale order which resulted in no sale being consummated. The district court instructed this Court "to analyze whether the Second RFC Settlement is fair and equitable under the factors set forth in *A&C Properties*."

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Central District of California  
Riverside  
Judge Mark Houle, Presiding  
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**CONT... Douglas J Roger, MD, Inc., A Professional Corporat**

**Chapter 7**

Therefore, the Court will continue with the analysis it was undertaking a year ago.

**FACTUAL BACKGROUND**

The Third Compromise Motion creates four categories of assets: (1) cash held by Trustee and in which Revere claims a security interest ("Encumbered Cash"); (2) cash received from the Auctioned Adversaries ("Unencumbered Cash"); (3) tax refunds ("Uncertain Cash"); and (4) claims ("Uncertain Claims"). Pursuant to the terms of the compromise the bankruptcy estate is guaranteed, for distribution to administrative and unsecured claimants, \$185,000 in Unencumbered cash, a \$45,000 carve-out from Revere.

The settlement agreement also contemplates the creation of a liquidating trust with Revere acting as liquidating trustee. The rights to pursue Debtor's causes of action will be assigned to the liquidating trust, and Revere will have full discretion to determine which claims to pursue. Revere will cover the costs incurred by the liquidating trust. Any recovery obtained by the liquidating trust will be distributed as followed:

- (1) Payment of taxes
- (2) An \$80,000 distribution to the bankruptcy estate
- (3) Reimbursement of expenses incurred by Revere
- (4) Payment of an "equalizing distribution" "so that the DJRI Estate has received 25% of all net proceeds and RFC has received 75% of all net proceeds; and
- (5) Distribution of 25% of all remaining proceedings to the bankruptcy estate.

In return, the settlement agreement provides that Trustee will agree to allow Revere a claim of \$5,500,000.00, of which \$4,000,000.00 will be treated as secured. Trustee also waives the right to challenge the validity or priority of Revere's security interest, and abandons any remaining interest in Revere's collateral.<sup>2</sup>

**DISCUSSION**

*I. Legal Standard for Approving Compromise*

**United States Bankruptcy Court  
Central District of California  
Riverside  
Judge Mark Houle, Presiding  
Courtroom 303 Calendar**

**Wednesday, July 10, 2019**

**Hearing Room 303**

11:00 AM

**CONT... Douglas J Roger, MD, Inc., A Professional Corporat**

**Chapter 7**

Rule 9019(a) authorizes the bankruptcy court to approve a compromise or settlement on the trustee's motion and after notice and a hearing. The bankruptcy court must consider all "factors relevant to a full and fair assessment of the wisdom of the proposed compromise." *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424, 88 S. Ct. 1157, 20 L. Ed. 2d 1 (1968). In other words, the bankruptcy court must find that the settlement is "fair and equitable" in order to approve it. *Martin v. Kane (In re A & C Props.)*, 784 F.2d 1377, 1381 (9th Cir. 1986).

In conducting this inquiry, the bankruptcy court must consider the following factors:

(a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

*Id.*

The bankruptcy court enjoys broad discretion in approving a compromise because it "is uniquely situated to consider the equities and reasonableness [of it] . . . ." *United States v. Alaska Nat'l Bank (In re Walsh Construction, Inc.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). As stated in *A & C Props.*:

The purpose of a compromise agreement is to allow the trustee and the creditors to avoid the expenses and burdens associated with litigating sharply contested and dubious claims. The law favors compromise and not litigation for its own sake, and as long as the bankruptcy court amply considered the various factors that determined the reasonableness of the compromise, the court's decision must be affirmed.

*Id.* (citations omitted).

On the other hand, even though the bankruptcy court has wide latitude in approving



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**CONT... Douglas J Roger, MD, Inc., A Professional Corporat Chapter 7**

compromises, its discretion is not completely unfettered. *See Woodson v. Fireman's Fund Ins. Co. (In re Woodson)*, 839 F.2d 610, 620 (9th Cir. 1988). The trustee bears the burden of proving to the bankruptcy court that the settlement is fair and equitable and should be approved. *In re A&C Props.*, 784 F.2d at 1382.

The Court shall apply the *A&C* factors to the Third Compromise Motion.

*A. The Probability of Success in the Underlying Litigation*

The factor does not carry significant weight, but may weigh slightly in favor of approving the compromise. As noted in the compromise motion [Dkt. No 521., pgs. 25-26], Trustee would face arduous litigation if the claim objection were to be prosecuted. Nevertheless, the unusual complexity that the litigation would present is more appropriately considered under the third *A&C* factor. Given the complexity of the record, and the superficiality of the argument presented regarding the first factor in the compromise motion, the Court cannot conclude that this factor carries significant weight.

*B. Difficulty of Collection*

Trustee and Revere argue that this factor is irrelevant because Trustee is not attempting to collect from Revere. This argument appears to miss the principle behind the second *A&C* factor – whether, if successful, the Trustee would face obstacles in realizing value. Here, a reduction in the claim of Revere would, potentially, free up assets for distribution to administrative and unsecured claimants. The Court has not been presented with any clear evidence in the record to suggest that the subsequent liquidation of those assets would be unusually burdensome. Therefore, this factor weighs against settlement, although the Court only gives this factor minimal weight.

*C. Complexity, Cost, Inconvenience and Delay of Litigation*

For the reasons stated in the compromise motion [Dkt. No. 521], the declaration of Arturo Cisneros [Dkt. No 523], the declaration of Franklin Fraley [Dkt. No. 524], and the request for judicial notice [Dkt. No 525], prosecuting a claim objection against Revere would be extraordinarily costly and unusually complicated. Therefore, this

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Central District of California  
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**CONT...** **Douglas J Roger, MD, Inc., A Professional Corporat**  
factor weighs in favor of settlement.

**Chapter 7**

*D. Interest of Creditors*

For the reasons stated in the compromise motion [Dkt. No 521, pgs. 27-28], and noting the lack of any opposition, the Court finds that this factor weighs in favor of the settlement. Specifically, the Court notes that the bankruptcy estate appears to be administratively insolvent at present, and it does not appear plausible, given the current state of the administration of the case, that the estate will become administratively solvent in the near future. Also noting that this case has been pending nearly six years, the Court is forced to conclude that the potential benefits offered by Revere pursuant to the settlement agreement, are, from the perspective of creditors, preferable to the instant quagmire.

Therefore, for the reasons stated above and for the reasons stated in the compromise motion [Dkt. No 521], the Court is inclined to find that the settlement agreement satisfies the *A&C Properties* factors.

*II. Miscellaneous*

The settlement contract and the liquidating trust agreement, a combined sixty-three pages, contain a number of minor drafting errors and inconsistencies. The Court is inclined to GRANT the compromise motion, noting, however, that: (a) any ambiguities or inconsistencies would likely be resolved against the drafter (i.e. Revere); and (b) any subsequent interpretation of the contract terms would be subject to a reasonableness test, with the Court retaining jurisdiction to interpret any dispute in terms.

An example of the former is that the compromise motion repeatedly oscillates between identifying an \$80,000 priority distribution and a \$75,000 priority distribution. [Dkt. No. 521, pgs. 10-12]. An example of the latter is the Court's continued interpretation to review the reasonableness of the "trust expense," as outlined in ¶ 3.10 of the liquidating trust agreement.

**United States Bankruptcy Court  
Central District of California  
Riverside  
Judge Mark Houle, Presiding  
Courtroom 303 Calendar**

**Wednesday, July 10, 2019**

**Hearing Room 303**

11:00 AM

**CONT... Douglas J Roger, MD, Inc., A Professional Corporat  
TENTATIVE RULING**

**Chapter 7**

The Court is inclined to GRANT the motion, APPROVING the compromise in its entirety subject to the concerns raised above.

APPEARANCES REQUIRED.

<b>Party Information</b>
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**Debtor(s):**

Douglas J Roger, MD, Inc., A

Represented By  
Summer M Shaw  
Michael S Kogan  
George Hanover

**Movant(s):**

Revere Financial Corporation

Represented By  
Franklin R Fraley Jr

**Trustee(s):**

Arturo Cisneros (TR)

Represented By  
Chad V Haes  
D Edward Hays  
Franklin R Fraley Jr